



James City County Purchasing Office
101-F Mounts Bay Road, Suite 300
Williamsburg, VA 23185
Phone: (757) 253-6646
Fax: (757) 253-6753
Email: Jenise.Howard@jamecitycountyva.gov

**JAMES CITY COUNTY, VIRGINIA
SEALED REQUEST FOR PROPOSAL
15-6998**

Title: COST ALLOCATION PLAN

Issue Date: February 6, 2015

Due Date: March 10, 2015, 2:00PM local time at the Purchasing Office
101-F Mounts Bay Road, Suite 300
Williamsburg, VA 23185

Submit: One (1) Original and Four (4) Copies; One (1) Electronic Copy

Inquiries: All questions pertaining to this project should be directed to Jenise Howard, VCA, no later than 2:00 p.m. on February 24, 2015 in writing by email: Jenise.Howard@jamecitycountyva.gov. Addendum will be issued by James City County Purchasing.

This public body does not discriminate against faith-based organizations.

In compliance with this Sealed Request for Proposal and subject to all the conditions thereof, the undersigned offers to furnish the goods/services requested and certifies he/she has read, understands, and agrees to all terms, conditions and requirements of this bid and is authorized to contract on behalf of the firm named below.

My signature on this solicitation constitutes certification that I or my designated representative have inspected the job site and am aware of the conditions under which the work must be accomplished. Claims, as a result of failure to inspect the job site, will not be considered by the County. By my signature on this solicitation, I certify that this firm/individual is properly licensed for providing the goods/services specified.

The Undersigned certifies that he (they) are the only person (persons) interested in said project and that it is made without connection with other persons submitting a proposal on the same scope of services; that the proposal is made without collusion, fraud, or reservation; that no official or employee of the Owner is directly or indirectly interested in said proposal, or any portion thereof.

PROPRIETARY INFORMATION YES () NO ()

Trade secrets or proprietary information is hereby submitted and identified. Reasons for protection and exclusion from the Virginia Freedom of Information Act (2.1-340 et seq.) are set forth below. (Additional sheet may be added if necessary.)

Offerors should indicate on the Cover Sheet the portions of their proposal that are proprietary. Please list the page numbers and the reason(s). **Do not mark the whole proposal proprietary. If Proprietary information is stated, Offerors shall submit One (1) Original and One (1) Redacted copy (removing any proprietary data or material).** Clearly identify on the Cover Sheet the "Original" and "Redacted" copy, as "Redacted Copy of Original Proposal" RFP 15-6998.

Company Name: _____

Address: _____

City/State/Zip: _____

Telephone: _____ **FAX:** _____

Email Address: _____

Federal Tax ID: _____

Print Name: _____ Title: _____

Signature: _____ Date: _____

Acknowledgement of Addendums: #1 _____ #2 _____

***State Corporation Commission Requirement per the Virginia Public Procurement Act, VPPA:**

§ 2.2-4311.2. Compliance with state law; foreign and domestic businesses authorized to transact business in the Commonwealth. -- A. All public bodies shall include in every written contract a provision that a contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.

B. Pursuant to competitive sealed bidding or competitive negotiation, all public bodies shall include in the solicitation a provision that requires a bidder or proposer organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 to include in its bid or proposal the identification number issued to it by the State Corporation Commission. Any bidder or proposer that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall include in its bid or proposal a statement describing why the bidder or proposer is not required to be so authorized.

C. Any bidder or proposer described in subsection B that fails to provide the required information shall not receive an award unless a waiver of this requirement and the administrative policies and procedures established to implement this section is granted by the Director of the Department of General Services or his designee or by the chief executive of a local governing body.

D. Any business entity described in subsection A that enters into a contract with a public body pursuant to this chapter shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract.

E. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

***Virginia State Corporation Commission ("SCC") registration information: The undersigned Proposer:**

- ☐ is a corporation or other business entity with the following SCC identification number: _____ **-OR-**
- ☐ is not a corporation, limited liability company, limited partnership, registered limited liability partnership, or business trust **-OR-**
- ☐ is an out-of-state business entity that does not regularly and continuously maintain as part of its ordinary and customary business any employees, agents, offices, facilities, or inventories in Virginia (not counting any employees or agents in Virginia who merely solicit orders that require acceptance outside Virginia before they become contracts, and not counting any incidental presence of the Proposer in Virginia that is needed in order to assemble, maintain, and repair goods in accordance with the contracts by which such goods were sold and shipped into Virginia from bidder's out-of-state location) **-OR-**
- ☐ is an out-of-state business entity that is including with this bid an opinion of legal counsel which accurately and completely discloses the undersigned Proposer's current contacts with Virginia and describes why those contacts do not constitute the transaction of business in Virginia within the meaning of § 13.1-757 or other similar provisions in Titles 13.1 or 50 of the Code of Virginia.

****NOTE**** >> Check the following box if you have not completed any of the foregoing options but currently have pending before the SCC an application for authority to transact business in the Commonwealth of Virginia and wish to be considered for a waiver to allow you to submit the SCC identification number after the due date for proposals (the Commonwealth reserves the right to determine in its sole discretion whether to allow such waiver): ☐

SUBMIT ALL PAGES OF COVER SHEET

**JAMES CITY COUNTY
SEALED REQUEST FOR PROPOSAL #15-6998
COST ALLOCATION PLAN**

I. PURPOSE

James City County is soliciting proposals from qualified offerors to prepare a Cost Allocation Plan (CAP). The Cost Allocation Plan must be compliant with OMB Circular A-87 and must identify all material indirect costs for recovery from federal and state grantor agencies.

It is James City County's intent to enter into an agreement with a contractor to establish a contract for a one (1) year initial period from the date of award. The contract will include an option to renew for four (4) additional 1-year periods.

II. DEFINITIONS

1. The term "Owner" used in this solicitation refers to James City County.
2. The term "Contractor" refers to the person or firm to whom an Award is made to perform the work under the contract.
3. The term "Offeror" means the firm or company submitting a proposal.
4. The term "Successful Offeror" means the Offeror/Proposer to whom the Owner on the basis of the Owner's evaluation as herein provided makes an award.

III. BACKGROUND

James City County (JCC) is a local government located near Williamsburg, Virginia serving a population of approximately 68,000. The County employs approximately 1,000 people in a variety of managerial, professional, technical, clerical, public safety, and maintenance positions.

The most recent cost allocation plan (CAP) completed for the year ended June 30, 2013 is available for review upon written request. Email request shall be sent to the attention of Jenise Howard, Purchasing Specialist, jenise.howard@jamescitycountyva.gov.

IV. INTERPRETATIONS AND ADDENDA

No oral explanation in regard to the meaning of the RFP Documents will be made, and no oral instructions will be given before the award of the work. Discrepancies, omissions or doubts as to the meaning of the RFP Documents shall be communicated in writing to the County for interpretation. Offerors should act promptly and allow sufficient time for a reply to reach them before the submission of their Offers. Any interpretation made will be in the form of an Addendum to the RFP, which will be forwarded to all holders of record and its receipts shall be acknowledged in the Offeror's proposal on the RFP Cover Sheet in the space provided.

V. FAMILIARITY WITH PROPOSED WORK

It is the responsibility of the Contractor, by careful personal examination of the RFP Documents and the Scope of Services, to visit the area of the work to be performed, if that is required; and satisfy himself as to the full scope of services required for the total project. The Contractor should study and carefully correlate the Contractor's knowledge and observations of the RFP Documents and such other related data and to promptly notify the County of all conflicts, errors, ambiguities, or discrepancies which the Contractor has discovered in or between the RFP Documents and such other related documents or conditions. Failure to do so shall not relieve the Successful Offeror of their obligation to perform as per the provisions of the resulting contract. The Contractor shall not at any time after the execution of the contract, make any claims whatsoever alleging insufficient data or incorrectly assumed conditions, nor shall they claim any misunderstanding with regard to the nature, conditions or character of the work or services to be provided under the contract.

VI. SCOPE OF SERVICES

1. Develop and prepare a detailed Cost Allocation Plan (CAP), which is compliant with OMB Circular A-87 and any current circular pertaining thereto that will identify all material indirect costs for recovery from federal and state grantor agencies.
2. Review the County's financial records, allocation bases, indirect cost pools and methods of distributing cost for appropriateness and also to identify alternative methodologies which may favorably impact indirect cost recoveries.

3. Negotiate, on behalf and in the best interests of the County, the completed CAP with federal and state representatives, as needed.
4. Defend and represent the County for a period of five (5) years should the Plan be audited by federal and state representatives.
5. Assist in preparing the initial claims for recovery of funds due to the County.
6. Prepare a draft CAP within six (6) weeks of the initial start date. A final copy of the plan shall be submitted for final approval by the County within two (2) weeks after submission of the County's comments on the draft plan.
7. Submit a completed CAP to federal and state negotiators per their requirements but not later than April 30 of each year.
8. Provide the County with one (1) electronic copy and one (1) hard copy of the annually completed CAP.
9. Provide status reports, statements, certificates, approvals and copies of proposed and executed plans and claims and other information relative to this project, as requested by the County.
10. The County shall provide necessary information and liaison with County offices and agencies.

VI. OFFEROR'S QUALIFICATIONS

All offerors shall be properly licensed by the Commonwealth of Virginia. All personnel assigned to this project should have a minimum of five (5) years of experience in providing the services detailed in this solicitation.

VII. INVOICES AND PAYMENT

The Contractor shall submit an invoice detailing the services provided and the actual cost incurred. Invoices/Billing shall be in accordance with rates provided in the proposal.

The Contractor shall submit the invoice to:

James City County
Accounts Payable Department
P.O. Box 8784
Williamsburg, VA 23187

Payments will be subject to James City County's Net 30 terms.

VIII. PROPOSAL SUBMISSION REQUIREMENTS

One (1) original (clearly marked as such), four (4) copies and one (1) electronic copy shall be submitted to the **James City County Purchasing Office, 101-F Mounts Bay Road, Suite 300, Williamsburg, VA 23185 no later than 2:00 PM local time on March 10, 2015**. Proposals received after the date and time prescribed shall not be considered for contract award and shall be returned to the Offeror. **Faxed and/or emailed proposals will not be accepted.**

It is the Offeror's responsibility to clearly identify and to describe the services being offered in response to the RFP. Proposals shall be signed by an authorized representative of the Offeror. Failure to submit all of the information requested may result in the Purchasing office requiring prompt submission of missing information and/or giving a lower evaluation of the proposal. Proposals that are substantially incomplete or lack key information may be rejected by the Purchasing office.

Oral proposals, those transmitted by telephone for facsimile, or those received after the submission date shall not be accepted. Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of this RFP. Emphasis should be placed on completeness and clarity of content. Proposals should be no more than 25 pages, excluding title page, letter of transmittal and table of contents.

Proposals should be organized in the same sequence order of the RFP and should refer to the RFP section by section. All pages of the proposal should be numbered. Each paragraph of the proposal should reference the paragraph number of the corresponding section of the RFP. The proposal should contain a Table of Contents which cross references the RFP requirements. Proposals not organized in this manner risk elimination from consideration if the evaluators are unable to find where the RFP requirements are specifically addressed in the proposal.

Fancy bindings, color displays, promotional materials, etc. are not desired. Proposals should be bound together without loose pages and contained in a single volume where practical and submitted clearly marked as response to “**Request for Proposals (RFP) 15-6998**”.

Proposals shall contain the following information in the sequence listed:

A. Letter of Transmittal

Information including name of firm submitting proposal; address of specific office handling project; when organized; if a corporation, when and where incorporated; the names and address of staff who would participate in this study. The letter and proposal must be signed by an official authorized to bind the firm to the provisions of this RFP and the submitted response.

B. Statement of Understanding

Detail the firm’s understanding of the Scope of Services for the County’s Cost Allocation Plan. Provide an outline of how the firm proposes to provide the required services.

C. Preliminary Work Plan

Offerors shall provide a description and timeline detailing the processes for work completion for the life of the contract, to include initial date of service and completion date. A brief description of the firm’s approach to customer service shall be provided. The Offeror shall detail the firm’s current workload and ability to absorb the work of this project simultaneously with other commitments.

D. Statement of Qualifications

1. Organization

- a. Describe firm’s qualifications and experience to perform the work detailed in this RFP.
- b. Detail firm experience for management of projects of comparable size and scope of service.
- c. Provide a list of similar projects the firm has completed which will provide evidence of familiarity with County, State and Federal programs.

2. Project Team

- a. Include a description of how the project team will be structured and identify core team members
- b. Describe specific qualifications of staff members to be assigned to this project. Clearly identify an individual’s experience relative to this project and any relevant professional certifications.
- c. Provide complete resumes for all staff that will perform work under this contract.
- d. All personnel assigned to this project should have a minimum of five (5) years of experience in providing the services detailed in this solicitation.

E. References

Offeror must submit three (3) references from clients, preferably governments similar in size to James City County, whom the firm has completed comparable work within the past three (3) years. The following information must be included:

- a. Organization Name and Address
- b. Customer contact – name, title and contact information
- c. Date of work performed and completion date
- d. Brief description of Scope of Services

Information is required which will show the composition of the task or work group, its specific qualifications and recent relevant experience.

F. Proposed Cost

Offerors shall submit a cost estimate that is all inclusive for the complete job as described above. No extra charges shall be allowed.

The vendor must acknowledge that all costs required to meet the RFP, including travel, are included. Travel cost shall be provided in a detailed breakdown and submitted for review. All travel costs shall be in accordance with James City County’s Travel Policy.

IX. EVALUATION CRITERIA AND SELECTION PROCEDURE

Evaluation of the proposals will be performed by a committee established for that purpose and will be based on the criteria set forth below. The contract resulting from this RFP will be awarded to the Vendor whose proposal is the most advantageous to the Owner, considering factors set forth herein. The evaluation committee will make the final determination about acceptability of proposals.

The committee will evaluate each proposal using the evaluation criteria set forth below:

- 1. Experience and Qualifications of the Firm and Individuals to be Assigned to the Project (20 points)**
- 2. Demonstrated Understanding of the Scope of Services (20 points)**
- 3. Proposed Method for Completing the Scope of Services (20 points)**
- 4. Proposed Cost (20 points)**
- 5. Availability to Provide Services in a Timely Manner and Customer Service Approach (20 points)**

As part of the evaluation, the Committee may hold discussions with qualified Offerors. Discussions will be in the form of questions to be answered by the Offerors via mail or e-mail at the discretion of the Committee. Results of the discussions will be included in the ranking of each proposal.

The Evaluation Committee may reject in whole or in part any all proposals, waive minor irregularities, and conduct discussions with all responsible Offerors in any manner deemed necessary to serve the best interest of James City County.

Offerors may be asked to make an oral presentation to the Evaluation Committee. The purpose of the oral presentation is to provide an opportunity for the Vendor to clarify its proposal submission and substantiate proposal representation.

The committee will recommend the Offeror whose overall proposal provides the most advantageous offer to James City County considering all factors mentioned above.

X. POLICY REGARDING CONTACT AFTER PROPOSALS

No Offeror shall initiate or otherwise have contact related to the solicitation with any Owner representative or employee, other than the James City County Purchasing Office, after the date and time established for receipt of proposals. Any contact initiated by an Offeror with any Owner representative or employee, other than the Purchasing Office, concerning this solicitation is prohibited and may cause the disqualification of the Offeror from this procurement process.

Questions regarding this Request for proposal may be directed to Jenise Howard, VCA by email Jenise.Howard@jamescitycountyva.gov. All questions that are pertinent to the project will be answered in the form of an addendum.

QUESTIONS MUST BE RECEIVED IN WRITING NO LATER THAN 2:00 P.M., FEBRUARY 24, 2015

XVI. CONTRACTUAL AGREEMENT

A Contract shall be issued to the successful Offeror for an initial one (1) year period and four (4) optional one year renewals at the County's sole discretion. The initial contract year will be for the fiscal year 2014 (July 1, 2013 and June 30, 2014, inclusive) CAP with the optional renewals covering fiscal years 2015-2018. Termination of the contract shall be as described in the General Terms and Conditions. An implementation meeting will be scheduled upon execution of the contract document.

The negotiated compensation fees based on the Scope of Services, and terms and conditions contained herein will be incorporated into the James City County Services Contract along with the RFP, any addenda and modifications thereto. No vendor developed forms or agreements shall be used in lieu of the Standard Contract. No references to vendor's online documents shall be included in the contract. The Owner's RFP shall be first in the order of precedence established in the Standard Contract.

The Offeror shall inform himself in full of the conditions relating to the performance of the contract. Failure to do so shall not relieve the successful Offeror of his obligations to provide services, materials, and reports or other services necessary to carry out the provisions of this Request for Proposals and resulting contract and to complete the Scope of Services outlined herein.

XVII. CONTRACT RENEWALS

This contract may be renewed by James City County/James City Service Authority for four (4) successive one (1) year periods under the terms and conditions of the original and as referenced below. Prices may only be negotiated at the time of renewal.

Automatic contract renewals are prohibited. Written notice of the County's intention to renew may be given approximately 60 days prior to the expiration date of each contract period. This notice does not indicate a commitment for the Owner to a contract renewal.

If James City County elects to exercise the option to renew the contract for additional one (1) year periods, subsequent yearly renewals shall not exceed the percentage change from the previous 12-months based on the most recent available data for the Consumer Price Index (CPI-U), Selected Local Areas, Washington, DC-MD-VA. Continuation of the contract shall be subject to allocation of funds for the work by the County Board of Supervisors.

XVIII. INSURANCE REQUIREMENTS

By signing and submitting a proposal under this solicitation, the proposer/offeror certifies that if awarded the contract, will have the insurance coverage's at the time the contract is awarded. If subcontractor is involved, the subcontractor will have workers compensation insurance in accordance with Sections 43-2.2-4332 and 65.2-800 et seq. of the Code of Virginia.

The offeror further certifies that the contractor and any subcontractors will maintain these insurance coverages during the entire term of the contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

A. Workers Compensation and Employers Liability

Coverage A – Statutory

Coverage B - \$100,000/\$100,000/\$500,000

A broad form of all states endorsement should be attached.

B. Commercial General Liability Including Contractual and Completed Operations

Limit of Liability \$1,000,000 per Occurrence

C. Commercial Auto Liability Including Hired and Non-Owned Car Liability Coverage

Limit of Liability \$1,000,000 per Occurrence

The Contractor shall purchase and maintain during the life of this Contract such commercial automobile liability insurance including employer's non-ownership liability and hired car liability insurance to protect him and any subcontractors performing work covered by this Contract from claims for damages, whether such operations be by him or any subcontractor, or by anyone directly or indirectly employed by either of them.

D. Excess Liability

Contractors have the option of meeting the insurance requirements of A, B, and C above with a single primary policy or providing evidence of an excess policy that, in addition to the primary policy, provides the coverage and meets the limit requirements of the coverage as specified in A, B, and C.

E. Self Insured Retentions, Deductibles and Aggregate Limits

All self-insured retentions, deductibles and aggregate limits on any required insurance must be disclosed and approved by the James City County Risk Management Director.

F. "Claims Made" Policies

If the liability insurance purchased by the Contractor has been issued on a "claims made" basis, the Contractor must comply with the following additional conditions. The limits of liability and the extensions to be included as described previously in these provisions, remain the same.

1. The Contractor must either:

- A. Agree to provide the certificates of insurance evidencing the above coverage for a period of three (3) years after final payment under the Agreement for General Liability policies. This certificate shall evidence a "retroactive date" no later than the beginning of the Contractor's work under this Agreement, or
- B. Purchase the extended reporting period endorsement for the policy or policies in force during the term of this Agreement and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.

2. The Contractor shall file with the Owner, as herein before required, satisfactory proof of acceptable insurance coverage. Such proof shall, unless otherwise required by the Owner, consist of the following:
 - A. Certificates of insurance on the insurance carrier's standard form indicating all policies required by law and the Contract documents. Certificates of insurance shall be furnished in a number of copies equal to the number of counterparts of the Contract documents executed. Contractor shall notify Owner immediately if Contractor receives notification of non-renewal or cancellation.
3. James City County shall be endorsed as an Additional Insured on the Commercial General Liability per ISO 2010 on a primary basis. James City County's or James City Service Authority's Commercial General Liability shall not contribute in any loss payment insured under the Contractor's Commercial General Liability policy.
 - A. All certificates must comply with the provisions of Section 38.2-518 of the Code of Virginia, 1950, as amended:

Hold Harmless/Indemnification:

The Contractor shall indemnify, defend and hold harmless the James City County and James City Service Authority from loss from all suits, actions, or claims of any kind brought as a consequence of any negligent act or omission by the Contractor. The Contractor agrees that this clause shall include claims involving infringement of patent or copyright. For purposes of this paragraph, "County", "Authority" and "Contractor" includes their employees, officials, agents and representatives. "Contractor" also includes subcontractors and suppliers to Contractor. The word "defend" means to provide legal counsel for the County/Authority or to reimburse the County/Authority for its attorneys' fees and costs related the claim. This section shall survive the Contract. The County/Authority is prohibited from indemnifying Contractor and/or third parties.

XIX. CONFLICT OF INTEREST

Offerors shall disclose in its Submission any actual or potential conflicts of interest and existing business relationships it has with the County, its elected or appointed officials or employees. The County may rely on such disclosure.

XX. GENERAL TERMS AND CONDITIONS (See Attachment D)

XXI. SPECIAL TERMS AND CONDITIONS (See Attachment E)

JAMES CITY COUNTY
GENERAL TERMS & CONDITIONS *and* INSTRUCTIONS TO BIDDERS

These CONDITIONS AND INSTRUCTIONS TO BIDDERS shall be binding on all bidders or offerors and are incorporated by reference in all contracts resulting from any written Request for Quotes, Invitation to Bid or Request for Proposals issued, collectively the (“Request”), to which they are attached. Use of the term “bid” in these General Terms & Conditions and Instructions to Bidders is not intended to be restricted to an Invitation to Bid and shall also affect written Request for Quotes, Invitation to Bid or Request for Proposals. The Purchasing Office is responsible for the purchasing activity of James City County, a political subdivision of the Commonwealth of Virginia, and the James City Service Authority, herein referred to collectively as “James City County” or “County”. Bidder/Offeror or their authorized representatives are expected to inform themselves fully as to the conditions, requirements, and specifications before submitting bids/proposals: failure to do so will be at the bidder’s/offeror’s own risk and except as provided by law, relief cannot be secured on the plea of error.

Subject to all Federal, State and local laws, policies, resolutions, regulations, rules, limitations and legislation including the County Purchasing Policy and the County Purchasing Manual, bids/proposals on all solicitations issued by the Purchasing Office will bind bidders/ offerors to applicable conditions and requirements herein set forth unless otherwise specified in the solicitation.

Cooperative Purchasing--James City County issues this solicitation in accordance with Section 2.2-4304 of the Virginia Public Procurement Act and Chapter 1, Section 5 of the James City County Purchasing Policy, and on behalf of the members of the Southeastern Virginia Governmental Purchasing Cooperative (SVGPC), as well as other public bodies, governmental jurisdictions and school divisions.

Bidders/Offerors are advised that all resultant contracts will be extended, with the authorization of the bidder/offeror, to other public bodies, governmental jurisdictions and school divisions as may be interested. Should other entities decide to use the final contract, the contractor shall deal directly with that jurisdiction or political subdivision concerning the placement of orders, issuance of the purchase orders, contractual disputes, invoicing and payments. James City County acts only as the “Contracting Agent” for these jurisdictions and political subdivisions. Failure to extend a contract to any jurisdiction will have no effect on consideration of your bid or offer.

It is the responsibility of the contractor to notify the public bodies, jurisdictions and political subdivisions of the availability of the contract.

Each participating public body, jurisdiction and political subdivisions has the option of executing a separate contract with the contractor. Such contracts may contain general terms and conditions unique to those jurisdictions and political subdivisions. If, when preparing such a contract, the general terms and conditions of a jurisdiction are unacceptable to the contractor, the contractor may withdraw its extension of the award to that jurisdiction.

James City County shall not be held liable for any costs or damages incurred by another public body or jurisdiction as a result of any award extended to that public body, jurisdiction or political subdivision by the contractor.

SVGPC members reserve the right to make awards to the lowest responsive and responsible offeror during the contract term. SVGPC members not explicitly named in the IFB are not obligated to participate, nor is the successful offeror obligated to contract with other SVGPC members.

City of Chesapeake
City of Hampton
City of Newport News
City of Norfolk
City of Portsmouth
City of Virginia Beach
City of Williamsburg
County of Gloucester
County of James City
County of King William
Thomas Nelson Community College
Newport News Redevelopment & Housing
DDS Tidewater Regional Office

Newport News Public County
Williamsburg/James City County Public County
York County Public County
Christopher Newport University
College of William & Mary
Norfolk State University
Tidewater Community College
Jamestown/Yorktown Foundation
Southeastern Public Service Authority
County of York
Portsmouth Redevelopment & Housing
CAS Norfolk Regional Office

1. AUTHORITY AND COOPERATIVE PURCHASING-

The County Purchasing Director has the sole responsibility and authority for negotiating, placing and when necessary modifying every solicitation, contract and purchase order issued by James City County. In the discharge of these responsibilities, the County Purchasing Director may be assisted by assigned buyers. Unless specifically delegated by the County Purchasing Director, no other County officer or employee is authorized to order supplies or services, enter into purchase negotiations or contracts, or in any way obligate the government of the County of James City for an indebtedness. Any purchase order or contract made which is contrary to these provisions and authorities shall be of no effect and void and the County shall not be bound thereby.

- 2. COMPETITION INTENDED:** It is the County's intent that this solicitation permit competition. It shall be the Bidder's/Offeree's responsibility to advise the Purchasing Director in writing if any language, requirement, specification, etc., or any combination thereof, stifles competition or inadvertently restricts or limits the requirements stated in this solicitation to a single source. The Purchasing Director must receive such notification not later than five (5) business days prior to the deadline set for acceptance of the bids/proposals.

CONDITIONS OF BIDDING

- 3. CLARIFICATION OF TERMS** - If any Bidder/Offeree has questions about the specifications or other solicitation documents, the prospective Bidder/ Offeree should contact the buyer whose name appears on the face of the solicitation no later than five (5) business days prior to the date set for the opening of bids or receipt of proposals. Any revisions to the solicitation will be made only by addendum issued by the buyer. Notifications regarding specifications may not be considered if received in less than five (5) business days of the date set for opening of bids/receipt of proposals.

- 4. USE OF COUNTY FORM AND TERMS AND CONDITIONS:** Failure to submit a solicitation on the official James City County form provided for that purpose or unauthorized modification of or additions to any portion of the solicitation documents may be a cause for rejection of the bid/proposal if the price, quality, quantity, delivery, necessary assurances, performance of the contract and other factors deemed important to the solicitation will be affected. James City County reserves the right to decide, on a case-by-case basis, in its sole discretion, whether to reject any bid or proposal which has been modified. The County shall not be responsible for any errors or omissions of the bidder/proposer. The solicitation shall be signed by a representative authorized to legally bind the firm. By signing the solicitation, the bidder/offeree agrees to the terms and conditions of the solicitation and certifies that they have inspected the job site(s) and are aware of the conditions under which the work must be accomplished. Claims, as a result of failure to inspect the job site, shall not be considered by the County.

5. LATE BIDS/PROPOSALS & MODIFICATION OF BIDS/ PROPOSALS:

Any bid/proposal/modification received at the office designated in the solicitation after the exact time specified for receipt of the bid/proposal/modification is considered a late bid/proposal/

modification.

James City County is not responsible for delays in the delivery of the mail by the U.S. Postal Service, private carriers or the inter-office mail system. It is the sole responsibility of the Bidder/Offeree to ensure their bid/proposal reaches the Purchasing Office by the designated date and hour.

- a. The official time used in the receipt of bids/ proposals is that time stamped by the automatic time stamp machine in the Purchasing Office. Date/time stamps marked after the designated time of receipt will be rejected.
- b. Late bids/proposals/modifications will be returned to the Bidder/Offeree UNOPENED, if solicitation number, acceptance date and Bidder/Offeree's return address is shown on the container.
- c. If the County closes its offices due to inclement weather scheduled bid openings or receipt of proposals will be extended to the next business day, same time.
- d. Vendors may modify their bids prior to the date and time specified for the bid opening. Facsimile modification of bids shall not be accepted unless the solicitation allowed such submission.

6. WITHDRAWAL OF BIDS/PROPOSALS:

A bidder/offeree for a contract other than for public construction may request withdrawal of his or her bid/proposal under the following circumstances:

- a. Bids/Proposals may be withdrawn on written request from the Bidder/offeree received at the address shown in the solicitation prior to the time of acceptance.
- b. Requests for withdrawal of bids/proposals after opening of such bids/proposals but prior to award shall be transmitted to the County Purchasing Director, in writing, accompanied by full documentation supporting the request. If the request is based on a claim of error, documentation must show the basis of the error. Such documentation may take the form of supplier quotations, vendor work sheets, etc. If bid bonds were tendered with the bid, the County may exercise its right of collection.
- c. Bids/proposals shall not be withdrawn after award of a contract or issuance of a purchase order. No plea or claim of mistake in a solicitation or resulting contract or purchase order shall be available as a defense in any legal proceeding brought upon a contract or purchase order awarded to a bidder/offeree as a result of the breach or nonperformance of such contract or purchase order.

No Bid/Proposal may be withdrawn under this paragraph when the result would be the awarding of the contract on another Bid/Proposal of the same bidder/offeree or of another bidder/offeree in which the ownership of the withdrawing bidder/offeree is more than five percent. In the case of Invitation for Bids, if a bid is withdrawn under the authority of this paragraph, the lowest remaining bid shall be deemed to be the low bid. No bidder/offeree who is

permitted to withdraw a bid/proposal shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid/proposal was submitted.

7. **ERRORS IN BIDS/PROPOSALS** – When an error is made in extending total prices, the unit bid price will govern. Erasures in bids/proposals must be initialed by the bidder/offeree. Carelessness in quoting prices, or in preparation of bid/proposal otherwise, will not relieve the Bidder/Offeree of his responsibilities to provide the good or service. Bidders/Offerees are cautioned to recheck their bids/proposals for possible errors. Errors discovered after public opening cannot be corrected and the bidder will be required to perform if his or her bid is accepted.

8. **IDENTIFICATION OF BID/PROPOSAL ENVELOPE:** The signed bid/proposal and requested copies should be returned in a separate envelope or package, sealed and identified with the following information:

ADDRESSED AS INDICATED ON PAGE 1

IFB/RFP NUMBER

TITLE

BID/PROPOSAL DUE DATE AND TIME

VENDOR NAME AND COMPLETE MAILING ADDRESS (RETURN ADDRESS)

If a bid/proposal is not addressed with the information as shown above, the Bidder/Offeree takes the risk that the envelope may be inadvertently opened and the information compromised, which may cause the bid/proposal to be disqualified. Bids/Proposals may be hand delivered to the designated location in the office issuing the solicitation. No other correspondence or other proposals should be placed in the envelope.

9. **ACCEPTANCE OF BIDS/PROPOSALS:** Unless otherwise specified, all formal bids/proposals submitted shall be valid for a minimum period of ninety (90) calendar days following the date established for acceptance. At the end of the ninety (90) calendar days the bid/proposal may be withdrawn at the written request of the Bidder/Offeree. If the proposal is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.

10. **PRICING:**

- a. Bidder warrants by virtue of bidding that prices, terms, and conditions quoted in his bid will be firm for acceptance for a period of ninety (90) days from the date of bid opening unless otherwise stated by the County or Bidder.
- b. Prices should be stated in units of quantity as specified in the bid form.
- c. Life cycle cost analysis may be considered when determining the lowest responsive and responsible bid. This analysis may consider, in addition to purchase price, any proposed upward or downward escalator clauses proposed for the initial contract term and any potential renewal terms; operating and related costs

over the life of the item including maintenance, down time, energy costs, salvage value, etc.

- d. Bid prices shall be for complete installation ready for the County's use and shall include all applicable freight and installation charges; extra charges will not be allowed.

e. When an annual contract is not requested by the County, and the bid is for products or services to be delivered on a one-time only or staggered basis, only firm pricing shall be given consideration. General terms such as "price in effect at time of delivery" shall not be considered for award.

11. **CONDITIONAL BIDS:** Conditional bids are subject to rejection in whole or in part if the price, quality, quantity, delivery, necessary assurances, performance of the contract and other factors deemed important to the solicitation will be affected.

12. **OPENING:** At the time fixed for the opening of responses to a bid, all bids will be opened and the names of the bidders and the amount bid shall be read aloud and made readily available to the public.

If a public opening of a Request for Proposals is held, only the names of the offerors will be read publicly.

13. **RESPONSE TO SOLICITATIONS:** In the event a vendor cannot submit a bid on a solicitation, the vendor is requested to return the solicitation cover sheet with an explanation as to why the vendor is unable to bid on these requirements. Because of the large number of firms listed on the County's Bidders List, it may be necessary to delete from this list the names of those persons, firms or corporations who fail to respond after having been invited to bid for three (3) successive solicitations. Such deletion will be made only after formal notification of the intent to remove the firm from the County's Bidder's List.

14. **BIDDER INTERESTED IN MORE THAN ONE BID:** If more than one bid is offered by any one party, either directly or by or in the name of his or her clerk, partner, or other persons, all such bids may be rejected. A party who has quoted prices on work, materials, or supplies to a bidder is not thereby disqualified from quoting prices to other bidders or firms submitting a bid directly for the work, materials or supplies.

15. **TAX EXEMPTION:** The County is exempt from the payment of any federal excise or any Virginia sales tax. The price bid must be net, exclusive of taxes. Tax exemption certificates will be furnished if requested by the Bidder/Offeree.

16. **DEBARMENT STATUS:** By submitting their bids/proposals, Bidders/Offerees certify that they are not currently debarred by James City County, the Commonwealth of Virginia, the Federal Government, any local government or government agency/entity/authority from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

17. **ETHICS IN PUBLIC CONTRACTING:** The provisions contained in Sections 2.2-4367 through 2.2-4377, Code of Virginia, as amended, shall be applicable to all contracts solicited or entered into by James City County. By submitting their bids/proposals, all Bidders/Offerors certify that their bids/proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Bidder, Offeror, supplier, manufacturer or subcontractor in connection with their bid/proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

The Bidder/Offeror certifies that to the best of his knowledge, no employee of the County, nor any member thereof, nor any public agency or official impacted by the solicitation or resulting contract has any pecuniary interest in the business of the Bidder/Offeror, and that no person associated with the Bidder/Offeror has any interest that would conflict in any manner with the performance of the contract resulting from this solicitation.

18. **PERFORMANCE BOND:** When requested in the bid, the County shall require the successful bidder to furnish a performance bond and labor and material payment bond with surety satisfactory to the County Attorney in the amount of the contract price at a time of or prior to execution of the contract.
19. **NO CONTACT POLICY:** No Bidder/Offeror shall initiate or otherwise have contact related to the solicitation with any County employee, other than the Purchasing Office, after the date and time established for receipt of bids/proposals. Any contact initiated by a Bidder/Offeror with any County representative, other than the Purchasing Office, concerning this solicitation is prohibited and may cause the disqualification of the Bidder/Offeror from this procurement process.
20. **LICENSES, PERMITS, AND FEES:** All bids submitted shall have included a list of any business and professional licenses, permits, or fees required by James City County or the Commonwealth of Virginia.

SPECIFICATIONS

21. **BRAND NAME OR EQUAL ITEMS:** Unless otherwise provided in the solicitation, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the article desired, and any article which the County in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The Bidder is responsible to clearly and specifically indicate the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable James City County to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding, only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate

data to enable James City County to determine if the product offered meets the requirements of the solicitation may result the bid being declared non-responsive. Unless the Bidder clearly indicates in its bid/proposal that the product offered is "equal" product, such bid/proposal will be considered to offer the brand name product referenced in the solicitation.

22. **FORMAL SPECIFICATIONS:** When a solicitation contains a specification which states no substitutes, no deviation therefrom will be permitted and the bidder will be required to furnish articles in conformity with that specification.
23. **OMISSIONS & DISCREPANCIES:** Any items or parts of any equipment listed in this solicitation which are not fully described or are omitted from such specification, and which are clearly necessary for the completion of such equipment and its appurtenances, shall be considered a part of such equipment although not directly specified or called for in the specifications.

The Bidder/Offeror shall abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications and drawings. Whenever the mention is made of any articles, material or workmanship to be in accordance with laws, ordinances, building codes, underwriter's codes, A.S.T.M. regulations or similar expressions, the requirements of these laws, ordinances, etc., shall be construed as to the minimum requirements of these specifications.

24. **EQUIPMENT STANDARDS.** Any equipment delivered shall be standard new equipment, latest model, the best quality, and the highest grade work, except as otherwise specifically stated in bid. Any part of nominal appurtenances which are usually provided in the manufacturer's stock model shall be furnished.
25. **ANNUAL CONTRACT USAGE REQUIREMENTS:** Whenever a bid is sought seeking a source of supply for an annual contract for products or services, the quantities or usage shown are estimates only. No guarantee or warranty is given or implied by James City County as to the total amount that may not be purchased from any resulting contracts. These quantities are for Bidder's information only and will be used for tabulation and presentation of bid.

AWARD

26. **AWARD OR REJECTION OF BIDS:** The Purchasing Director shall award the contract to the lowest responsive and responsible bidder complying with all provisions of the IFB, provided the bid price is reasonable and it is in the best interest of the County to accept it. Awards made in response to a RFP will be made to the highest qualified offeror whose proposal is determined, in writing, to be the most advantageous to the County taking into consideration the evaluation factors set forth in the RFP. The Purchasing Director reserves the right to award a contract by individual items, in the aggregate, or in combination thereof, or to reject any or all bids/proposals and to waive any informality in bids/proposals received whenever such rejection or waiver is in the best interest of the County. Award may be made to as many bidders/offerors as deemed necessary to fulfill the anticipated requirements of James City County.

The Purchasing Director reserves the right to negotiate with the lowest responsive, responsible bidder should bids exceed available funds. The Purchasing Director shall reject the bid if the bidder is deemed to be a non-responsive or non-responsive bidder.

27. QUALIFICATIONS OF BIDDERS OR OFFERORS:

James City County may make such reasonable investigations as deemed proper and necessary to determine the ability of the Bidder/Offeree to perform the work/furnish the item(s) and the Bidder/Offeree shall furnish to James City County all such information and data for this purpose as may be requested. James City County reserves the right to inspect Bidder's/Offeree's physical facilities prior to award to satisfy questions regarding the Bidder's/Offeree's capabilities. James City County further reserves the right to reject any bid or proposal if the evidence submitted by or investigations of, such Bidder/Offeree fails to satisfy James City County that such Bidder/Offeree is properly qualified to carry out the obligations of the contract and to complete the work/furnish the item(s) contemplated therein.

28. TIE BIDS: In the case of a tie bid, the County may give preference to goods, services and construction produced in the County or provided by persons, firms or corporations having principal places of business in the County. If such choice is not available, preference shall then be given to goods and services produced in the Commonwealth pursuant to Code of Virginia § 2.2-4324. If no County or Commonwealth choice is available, the tie shall be decided by lot.

29. FACTORS OTHER THAN PRICE IN AWARD DECISION: The following factors, in addition to price (as they apply), shall be a consideration in the award decision:

- a. The quality of performance/workmanship of previous contracts, services or products, or references which attest to other specific experiences;
- b. The timely completion of previous contracts or services or the timely delivery of past orders; or references which attest to other specific experiences;
- c. The sufficiency of financial resources and its impact on ability of the bidder to perform the contract or provide the services;
- d. The County reserves the right to conduct on-site inspections of any bidder's facilities prior to award. The results of said inspection will be considered by the County in determining bidder's capabilities of successfully administering to this contract;
- e. The ability and availability of the bidder to provide both quality and timely maintenance, service, and/or parts;
- f. The resale value, life cycle costing, and value analysis of a product;
- g. The availability and capability of local and regional vendor support as it affects the quantity, quality, and timeliness of the work or products required;
- h. Delivery of a product and timely completion of a project as stated by vendor in bid;

- i. Substantial compliance or noncompliance with specifications set forth in bid as determined by the County;
- j. Product or parts inventory capability as it relates to a particular bid; and
- k. Results of product testing.

CONTRACT PROVISIONS

30. APPLICABLE LAW AND COURTS: Any contract resulting from this solicitation shall be governed in any respects by the laws of Virginia, and any litigation with respect thereto shall be brought in the Circuit Court or General District Court of James City County, Virginia. The Contractor shall comply with applicable federal, state and local laws and regulations.

31. IMMIGRATION REFORM AND CONTROL ACT OF 1986: By entering into this contract, vendor certifies that it does not and will not during the performance of this contract knowingly employ an unauthorized alien as defined in, or otherwise violate the provisions of, the federal Immigration Reform and Control Act of 1986, as amended.

32. OBLIGATIONS OF COUNTY AND CONTRACTOR:
County: The County shall furnish to the contractor all available information as listed in the solicitation that may be useful for the contract work. The County shall assist the contractor in obtaining access to enter upon public and private property as required to perform the contract work. The County shall designate a representative who shall serve as the principal contact and give direction to the contractor throughout the duration of the contract. Contractor: The contractor represents that he has, or shall secure at his expense, all personnel, including subcontractors, required to perform and complete the Scope of Work.

33. CONFIDENTIALITY AND OWNERSHIP OF DATA: Any reports, information, intellectual property, data, drawings, specifications, estimates and summaries given to or prepared or assembled by the contractor under the Scope of Work of the contract, shall not be made available to any individual or organization by the contractor without prior written approval of the County. All of these items shall become the property of the County upon payment of fees as required by the contract.

34. REPORTS OF WORK: The County and the contractor shall schedule progress meetings at appropriate intervals throughout the duration of the contract. These meetings shall provide for the exchange of information related to the status of the Scope of Work, anticipated progress and any problems that have occurred.

35. ANTI-TRUST: By entering into a contract, the contractor conveys, sells, assigns, and transfers to James City County all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust law of the United States and James City County, relating to the particular goods or services purchased or acquired by James City County under said contract. Consistent and continued tie bidding could cause rejection of bids by the Purchasing Director and/or investigation for Anti-Trust violations.

36. **PAYMENT TERMS:** Unless otherwise provided in the solicitation payment will be made thirty (30) days after receipt of a proper invoice with complete supporting documentation, or thirty (30) days after receipt of all goods or acceptance of work, whichever is the latter. For construction projects, the County may retain five percent (5%) of the total amount of each partial progress payment to assure faithful performance of the contract by the contractor. The County will release all retainage upon final payment.

- a. Invoices for items/services ordered, delivered/performed and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the contract number, purchase order number, and any federal employer identification number.
- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. The date of payment shall be deemed the date of postmark in all cases where payment is made by mail.

37. **PAYMENT TO SUBCONTRACTORS:** A contractor awarded a contract under this solicitation is hereby obligated:

- a. To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from James City County for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
- b. To notify James City County and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.

The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from James City County, except for amounts withheld as stated in b above. The date of mailing of any payment by U.S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of James City County.

38. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the Contractor in whole or in part without the written consent of the Purchasing Director.

39. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, James City County, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to another remedies which James City County may have.

40. **AVAILABILITY OF FUNDS:** It is understood and agreed between the contractor and the County herein that the

County shall be bound hereunder only to the extent of the funds available or which hereafter become available for the purpose of the contract.

41. **ANTI-DISCRIMINATION:** By submitting their bids/proposals, Bidders/Offerors certify to James City County that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and the Code of Virginia § 2.2-4311, as amended. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts shall be subject to audit by the public body. (Code of Virginia § 2.2-4343.1.E).

In every contract over \$10,000 the provisions in a and b below apply:

a. During the performance of this contract, the Contractor agrees as follows:

- 1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- 2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
- 3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section.

b. The Contractor will include the provisions of a. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

42. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, offeror, or contractor shall not be discriminated against in the solicitations or award of this contract because of race, religion, color, sex, national origin, age or disability or against faith-based organizations. If the award of this contract is made to a faith-based organization and an individual who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from

which the individual receives or would receive the goods, services, or disbursements, James City County shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, service, or disbursements from an alternative provider.

43. **INVOICES:** Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the IFB/RFP number and/or purchase order number.
44. **PRECEDENCE OF TERMS:** In the event there is a conflict between the General Terms and Conditions and any Special Terms and Conditions, the Special Terms and Conditions shall apply.
45. **CHANGES TO THE CONTRACT:** There shall be no extra work allowed on the contract without prior written authorization in the form of a change order signed by the Purchasing Director or the County Administrator. No officer, agent or employee of the County is authorized to give verbal instructions to increase the Scope of Work and the contractor shall not use verbal instructions as the basis for additional costs. Changes can be made to the contract in any of the following ways by the issuance of a Change Order:
 - a. The parties may agree to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
 - b. James City County may order changes within the general scope of the contract at any time by written notice to the Contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the County a credit for any savings. Said compensation shall be determined by one of the following methods.
 - 1) By mutual agreement between the parties in writing; or
 - 2) By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the County's right to audit the Contractor's records and/or determine the correct number of units independently; or
 - 3) By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present the County with all vouchers and records of expenses incurred and savings realized. The County shall have the right to audit the records of the Contractor as it deems

necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Office within thirty (30) days from the date of receipt of the written order from the Purchasing Office. If the parties fail to agree on an amount of adjustment, the questions of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for relieving disputes provided by the Disputes Clause of the contract. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by the County or with the performance of the contract generally.

- c. No modification for a fixed price contract may be increased by more than 25% or \$50,000, whichever is greater, without the advanced written approval of the Board of Supervisors.

46. **AUTHORIZATION TO TRANSACT BUSINESS, STATE REGISTRATION OF CONTRACTORS (IF APPLICABLE) AND COUNTY BUSINESS LICENSE:** A contractor organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.

Pursuant to competitive sealed bidding or competitive negotiation, all bidders or offerors organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 are required to include in its bid or proposal the identification number issued to it by the State Corporation Commission. Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized.

Attention is directed to Chapter 11, title 54.1 of the Code of Virginia (Re: State registration of contractors), which requires that all bidders must show evidence of the proper license under the provision of this chapter before such bid is considered.

All firms doing business in James City County are required to be licensed in accordance with the County's "Business, Professional, and Occupational Licensing (BPOL) Tax" Ordinance. Wholesale and retail merchants without a business location in James City County are exempt from this requirement. Questions concerning the BPOL Tax should be directed to the Business License Inspector, telephone (757) 253-6698.

47. **PROPRIETARY INFORMATION:** Section 2.2-4342F of the Code of Virginia states: "Trade secrets of proprietary information submitted by a bidder, offeror, or contractor in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the bidder, offeror, or contractor

must invoke the protections of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary." Declaring an entire bid or proposal response as proprietary is unacceptable.

48. **INDEMNIFICATION:** The Contractor hereby binds himself and his successors to indemnify, defend, and save harmless James City County, its officers, agents or employees, from all suits and actions of every name and description brought against it or them, and all costs or damages to which it or they may be put, on account of, or by reason of any injury or alleged injury to the person or property of another, resulting from or on account of the negligent acts, errors or omissions, recklessness or intentionally wrongful conduct of the Contractor or his agents in the performance of the contract; and that the whole or so much of the moneys due to the contractor under and by virtue of this Contract, as such or may be considered necessary by the County, shall and may be retained until all such suits and claims for damages as aforesaid shall have been settled, and evidence to that effect furnished to the satisfaction of the County. The said Contractor further agrees to indemnify and save harmless James City County against any and all claims, suits or demands that may accrue to, be suffered by, or adjudicated against it by reason of any injury sustained by any of the Contractor's employees in and about the said work, under and pursuant to the provisions of the Workman's Compensation Law or any amendments thereto, and the Contractor shall produce certificates or other satisfactory evidence of ample protection against such liability.

49. **NOTICE OF REQUIRED DISABILITY LEGISLATION:** The County government is required to comply with State and Federal disability legislation: The Rehabilitation Act of 1973 Section 504, The Americans with Disabilities Act (ADA) of 1990 Title II and the Virginia with Disabilities Act of 1990. Specifically, the County, may not, through its contractual and/or financial arrangements, directly or indirectly avoid compliance with Title II or the Americans with Disabilities Act, Public Law 101-336, which prohibits discrimination by public entities on the basis of disability. Subtitle A protects qualified individuals with disability from discrimination on the basis of disability in the services, programs, or activities of all State and local governments. It extends the prohibition of discrimination in federally assisted programs established by the Rehabilitation Act of 1973 Section 504 to all activities of State and local governments, including those that do not receive Federal financial assistance, and incorporates specific prohibitions of discrimination on the basis of disability in Titles I, III, and V of the Americans with Disabilities Act. The Virginians with Disabilities Act of 1990 follows the Rehabilitation Act of 1973 Section 504.

50. **DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the

contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

51. **Non-Responsive Performance:**

Delivery Delays: James City County reserves the right to procure goods and/or services to be provided under this contract from other sources in the event Successful Bidder fails to deliver such goods and/or service deliverables in accordance with delivery dates and time frames set forth in this contract. **Unacceptable Deliveries (Rejections):** Upon notification by James City County that goods and/or service deliverables provided by the Successful Bidder under this contract are damaged and/or not of the quality specified by James City County, such goods and/or service deliverables will be rejected. Successful Bidder shall replace such rejected goods and/or service deliverables immediately or within a reasonable time as determined by James City County.

Successful Bidder shall remove all rejected materials, equipment or supplies from the premises of James City County within ten (10) days of notification. Rejected goods and/or service deliverables not removed from James City County premises within ten (10) days will be regarded as abandoned, shall become the property of James City County, and James City County shall have the right to dispose of such items. **James City County Purchase From Alternate Sources:** James City County reserves the right to authorize immediate purchase from other sources against delayed deliveries and/or rejections. The Successful Bidder shall reimburse James City County promptly for excess costs incurred by James City County for such purchases. Any such purchases will be deducted from the contract amount. In the event James City County cost of obtaining goods and/or service deliverables from other sources be less, Successful Bidder shall have no claim to the difference. **Liability:** Successful Bidder shall be liable to James City County for all costs incurred by James City County as a result of Successful Bidder's failure to perform in accordance with the contract. Successful Bidder's liability shall include, but not be limited to: Damages and other delay costs, to include costs to procure goods/services from alternate suppliers. Increased costs of performance, such as extended overhead and increased performance costs resulting from performance delays caused by Successful Bidder and/or rejections of Successful Bidder's goods and/or service deliverables. Warranty and rework costs, liability to third party, excess costs, attorney's fees and related costs incurred by James City County due to non-responsive performance of Successful Bidder.

52. **BREACH OF CONTRACT:** Successful Bidder shall be deemed in breach of this contract if the Successful Bidder: Fails to comply with any terms of this contract; Fails to cure such noncompliance within five (5) calendar days from the date of the Owner written notice or such other time frame,

greater than five (5) calendar days, specified by the JCC Contract Administrator in the notice. Successful Bidder fails to submit a written response to the Owner notification of noncompliance within five (5) calendar days after the date of the Owner notice. All notices under this contract shall be submitted, either by fax, email or certified mail, return-receipt requested, to the respective contract administrator. Successful Bidder shall not be in breach of this contract as long as its default was due to causes beyond the reasonable control of and occurred without any fault or negligence on the part of both the Successful Bidder and its sub-contractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of Owner in its sovereign capacity, fires, floods, epidemics, strikes, freight embargoes, and unusually severe catastrophic weather such as hurricanes.

53. **TERMINATION:** Subject to the provisions below, the contract may be terminated by the County upon thirty (30) days advance written notice to the other party. Upon receipt of a notice of termination, the contractor shall cease all work underway on behalf of the County unless advised by the County to do otherwise. In the event of termination, Contractor shall be compensated only for the services as set forth in the contract provided to the satisfaction of the County and expenses incurred as of the date of termination. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

- a. Termination for Convenience: In the event that the contract is terminated upon request and for the convenience of the County, without the required thirty (30) days advance notice, then the County shall be responsible for payment of services up to the termination date.
- b. Termination for Cause: Termination by the County for cause, default or negligence on the part of the contractor shall be excluded from the foregoing provision; termination costs, if any shall not apply. However, pursuant to the Default paragraph of these General Conditions, the County may hold the contractor responsible for any resulting additional purchase and administrative costs. Any payment due to the contractor at the time of termination may be adjusted to the extent of any additional costs occasioned to the County by reason of the contractor's default. The thirty (30) days advance notice requirement is waived in the event of Termination for Cause.
- c. Termination Due to Unavailability of Funds in Succeeding Fiscal Years: When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, the contract shall be canceled.

54. **CONTRACTOR RESPONSIBILITY FOR COUNTY PROPERTY:** The Contractor shall be responsible for damages to County property caused by work performed by itself or its subcontractors. The Contractor shall be responsible for maintaining the area surrounding and adjoining the work site in their current condition. Property damage to surrounding or adjoining areas caused directly or

indirectly by actions or omissions of the Contractor shall be replaced or remedied by the Contractor, to the satisfaction of the County, at the Contractor's expense.

55. **COPYRIGHTS OR PATENT RIGHTS:** The bidder certifies by submission of bid that there has been no violation of copyrights or patent rights in manufacturing, producing, or selling the product or services shipped or ordered as a result of this bid. The successful bidder shall, at his own expense, defend any and all actions or suits charging such infringement, and will save James City County, its officers, employees, and agents harmless from any and all liability, loss, or expense occasioned by any such violation.

56. **DELIVERY:** In the appropriate space, the bidder shall state the time of proposed delivery or project completion in number of calendar days. Unless otherwise specified, calendar days shall be presumed. Unless otherwise specified, quote the earliest delivery possible, as this may be considered a factor in making award. Delivery expressed in calendar days may be given preference over such general terms as "stock immediately," and "as soon as possible." As time will be of the essence for any orders placed as a result of this bid, the County reserves the right to cancel such orders, or any part thereof, without obligation, if delivery is not made at the time(s) specified on bid form.

57. **INDEPENDENT CONTRACTOR:** The contractor shall be legally considered an independent contractor and neither the contractor nor its employees shall, under any circumstances, be considered servants or agents of James City County or James City Service Authority; and the County shall be at no time legally responsible for any negligence or other wrongdoing by the contractor, its servants, or agents. The County shall not withhold from the contract payments to the contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the contractor. Further, the County shall not provide to the contractor any insurance coverage or other benefits, including Worker's Compensation, normally provided by the County for its employees.

58. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the Purchasing Director. In the event that the contractor desires to subcontract some part of the work, the contractor shall furnish the Purchasing Director the names, qualifications and experience of the proposed subcontractors. The contractor shall remain fully liable and responsible for the work to be done by its subcontractors and shall assure compliance with all requirements of the contract.

59. **HOLIDAYS:** The Contractor shall receive approval of the County, in advance, of any work to be performed on Holidays. James City Service Authority/James City County observes the following Holidays:

New Year's Day	1 st day of January
Martin Luther King's Birthday	3 rd Monday in January
President's Day	3 rd Monday in February
Memorial Day	Last Monday in May
Independence Day	4 th day in July
Labor Day	1 st Monday in September
Veteran's Day	11 th day in November
Thanksgiving Day	4 th Thursday in

November	
Day after Thanksgiving	4 th Friday in November
Christmas Eve	24 th day in December
Christmas Day	25 th day of December

DELIVERY PROVISION

60. **SHIPPING INSTRUCTIONS-CONSIGNMENT:** Unless otherwise specified in the solicitation each case, crate, barrel, package, etc., delivered under the contract must be plainly stenciled or securely tagged, stating the Contractor's name, purchase order number, and delivery address as indicated in the order. Where shipping containers are to be used, each container must be marked with the purchase order number, name of the Contractor, the name of the item, the item number, and the quantity contained therein. Deliveries must be made within the hours of **8:00 a.m. – 3:00 p.m.** Deliveries at any other time will not be accepted unless specific arrangements have been previously made with the designated individual at the delivery point. No deliveries will be accepted on Saturdays, Sundays and holidays unless previous arrangements have been made. It shall be the responsibility of the contractor to insure compliance with these instructions for items that are drop-shipped.
61. **RESPONSIBILITY FOR SUPPLIES TENDERED:** The Contractor shall be responsible for the materials or supplies covered by the contract until they are delivered at the designated point, and a physical inspection is made and material is requested or rejected, but the Contractor shall bear all risk on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the contractor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, the County may return the rejected materials or supplies to the Contractor at his or her risk and expense or dispose of them as its own property.
62. **TESTING AND INSPECTIONS:** James City County reserves the right to conduct any test/inspection it may deem advisable to assure supplies and services conform to the specification. Inspection and acceptance of materials or supplies will be made after delivery at destinations herein specified unless otherwise stated. If inspection is made after delivery at destination herein specified, the County will bear the expense of inspection except for the value of samples used in case of rejection. Final inspection shall be conclusive except in regard to latent defects, fraud or such gross mistakes as to amount to fraud. Final inspection and acceptance or rejection of the materials or supplies will be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the County for such materials or supplies as are not in accordance with the specifications.
63. **COMPLIANCE:** Delivery must be made as ordered and in accordance with the solicitation or as directed by the Purchasing Office when not in conflict with the bid/contract. The decision as to reasonable compliance with delivery terms shall be final. Burden of proof of delay in receipt of goods by the purchaser shall rest with the Contractor. Any request for extension of time of delivery from that specified

must be approved by the Purchasing Office, such extension applying only to the particular item or shipment affected. Should the Contractor be delayed by the County, there shall be added to the time of completion a time equal to the period of such delay caused by the County. However, the contractor shall not be entitled to claim damages of extra compensation for such delay or suspension. These conditions may vary for construction contracts.

64. **POINT OF DESTINATION:** All materials shipped to the County must be shipped F.O.B. DESTINATION unless otherwise stated in the contract. The materials must be delivered to the "Ship To" address indicated on the purchase order.
65. **REPLACEMENT:** Materials or components that have been rejected by the Purchasing Office, in accordance with the terms of the contract, shall be replaced by the Contractor at no cost to the County.
66. **PACKING SLIPS OR DELIVERY TICKETS:** All shipments shall be accompanied by Packing Slips or Delivery Tickets and shall contain the following information for each item delivered:
- Purchase Order Number/Contract Number
 - Name of Article and Stock Number,
 - Quantity Ordered,
 - Quantity Shipped,
 - Quantity Back Ordered,
 - The Name of the Contractor.

Contractors are cautioned that failure to comply with these conditions shall be considered sufficient reason for refusal to accept the goods.

67. **SAMPLES:** Evidence in the form of samples may be requested if brand being quoted upon is other than as specified. The County reserves the right to request that such samples be furnished at the time of bid opening. The County also reserves the right to request samples after the date of bid opening. Requested samples must be furnished free of expense to the County and if not used in testing or destroyed, will, upon request, be returned at the bidder's expense.

BIDDER/CONTRACTOR REMEDIES

68. **PROTEST OF AWARD OR DECISION TO AWARD:** Any Bidder/ Offeror who desires to protest the award or decision to award a contract, by James City County shall submit such protest in writing to the County no later than ten (10) days after public notice of the award or announcement of the decision to award, whichever comes first. No protest shall lie for a claim that the selected bidder/Offeror is not a responsible Bidder/Offeror. The written protest shall include the basis for the protest and the relief sought. The Purchasing Director shall issue a decision in writing within ten (10) days stating the reasons for the action taken. This decision shall be final unless the bidder/offeree appeals within ten (10) days of the written decision by instituting legal action. Nothing in this paragraph shall be construed to permit an offeror to challenge the validity of the terms or conditions of the solicitation.
69. **DISPUTES:**
Claims. Written notice of the Contractor to file a

claim must be given at the time of the occurrence or beginning of the work upon which the claim is based. Such claims, whether for money or other relief, shall be submitted in writing to the County's Purchasing Director no later than sixty (60) days after final payment. The Purchasing Director shall give written notification of the final decision on such claim to the Contractor within thirty (30) days of the date the claim was received. The Contractor may not institute legal action before receiving the Purchasing Director's final written decision, unless the Purchasing Director fails to render such decision within the specified time. Pendency of

claims shall not delay payment of amounts agreed due in the final payment. (Code of Virginia, § 2.2-4363).

Claims Relief. Under certain circumstances beyond the control of the Contractor, such as acts of God, sabotage, and fire or explosion not caused by negligence of the Contractor or its agent, the Purchasing Director may extend the time limit for performance required by this Contract. Any such extension must be issued in writing and signed by the Purchasing Director.